



To: Executive Committee  
From: Joe Huddleston  
Date: May 6, 2013  
Subject: Report of the Executive Director

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This report is a summary of the Commission's organizational and staff activities for the period July 1, 2012, through April 30, 2013 (unless otherwise noted).

## **I. Programs & Activities**

### **A. Joint Audit Program**

The audit division completed five and parts of six income tax audits thus far this fiscal year. The audit division also completed eight sales tax audits and parts of five other sales tax audits thus far this fiscal year. There are currently 20 income and 38 sales tax audits in progress. Proposed assessments from these audits total \$36,369,706.

The following chart summarizes hourly data for completed audits thus far this fiscal year:

	<b>Income &amp; Franchise</b>	<b>Sales &amp; Use</b>	<b>Total</b>
<b>Total Audits</b>	5	8	13
<b>Total States Audited</b>	150	101	251
<b>Total Hours</b>	12,836	7,709	20,545
<b>Average Hours per State</b>	86	76	82

Aside from the meetings of the Audit Committee, states in numerous audits have met with staff via teleconferences to discuss particular audits in progress and issues specific to those audits.

Audit division staff provided instruction at three income tax training classes and two sampling classes.

## **B. National Nexus Program**

During the period July 1 to April 30, 2013, the Commission recovered \$7,097,662 on behalf of National Nexus Program member-states from 480 completed voluntary disclosure contracts (compare to \$12.5 million recovered in FY 2012). In addition, the Commission recovered \$586,182 on behalf of non-member states. These amounts do not include interest or the future value of a new taxpayer.

Nexus staff continued its work to keep the multi-state voluntary disclosure documents and process as uniform as possible among states while meeting each state's requirements:

- Worked with the Nexus Committee to amend the template voluntary disclosure contract and the corresponding Procedures of Multi-state Voluntary Disclosure to address specific state concerns within the standard documents.
- Worked with the Nexus Committee to prepare suggestions for the Executive Committee regarding updates to the NNP charter to reflect changes in actual activities. The committee expects to present these to the Executive Committee for consideration at its July meeting.
- Worked with the Nexus Committee to develop a policy to address non-Nexus-members participating in multi-state voluntary disclosure services. Staff will implement the committee's recommendation to discontinue non-member participation as of July 1, 2014.

The Commission offered on its website to assist taxpayers with general nexus questions. The Commission also started offering citations to primary sources to jump-start a taxpayer's state-specific research.

Nexus staff is focusing on reaching out to states to ensure that they know all the services the Commission offers and to increase sovereignty membership and membership in the Audit and Nexus programs. Staff is meeting in person with top revenue officials when it is cost-effective. Staff has met so far with officials from Indiana and Arizona, and has meetings scheduled in May with Maryland and Virginia. Staff is letting states know that non-members will not be able to participate in multi-state voluntary disclosure as of July 1, 2014.

Nexus staff launched a project to encourage states that do not presently have a link on their voluntary disclosure page to add one that links to the Commission's page. A number of states have agreed to do so, some declined, and we're working on the rest.

Nexus staff taught a Nexus School in St. Paul, Salem, Salt Lake City, and Phoenix. Nexus staff substantially revised and updated much of the material in the Nexus School written materials in advance of the Salt Lake City school and has continued to

update it in advance of each school. In addition, staff presented the nexus portion of the Income Tax School in Helena.

### **C. Legal Division**

The legal division staffs two standing committees: Uniformity and Litigation. The division also holds regular state tax attorney teleconferences; participates as speakers at conferences, symposiums and institutes; and teaches the commission's corporate income tax and nexus training courses. The division provides individual state support on request by filing amicus briefs in state and federal courts; consulting in litigation matters; and reviewing draft statutes, regulations, and legal briefs. The division also provides legal support for the commission's audit division, training division, and general administration.

#### Uniformity Work

Through April 30<sup>th</sup> of this fiscal year, the division has staffed two in-person meetings of the Uniformity committee and subcommittees, three teleconferences for the Sales & Use Tax Uniformity subcommittee, and one teleconference for the Income & Franchise Tax Uniformity subcommittee. The legal division is currently staffing 11 uniformity proposals under consideration by the Executive and Uniformity committees, in addition to developing improvements to the uniformity process:

- *Amendments to UDITPA and Compact Art. IV related provisions* (pending completion of hearing officers report; hearing conducted March 27, 2013 by Professor Richard Pomp)
  - Definition of "sales" - Compact Art.IV(1)(g)
  - Sales factor sourcing - Compact Art.IV.17
  - Factor weighting - Compact Art.IV.9
  - Definition of "business income" - Compact Art. IV.1(a)
  - Distortion relief - Compact Art. IV.18
- *Model Sales & Use Tax Notice and Reporting Statute* (pending executive committee consideration after bylaw 7 survey; awaiting decision by the United States Court of Appeals for the 10th Circuit in *Direct Marketing Association v. Brohl*, D.C. No. 10-cv-01546-REB-CBS)
- *Model Statute Regarding Partnership or Pass-Through Entity Income Ultimately Realized by an Entity That Is Not Subject to Income Tax* (pending executive committee reconsideration after hearing officer's report and recommendations led to request for additional uniformity committee input)
- *Telecommunications Definition and Sourcing* (resolution under consideration by executive committee)

- *Model Nexus Statute* (under development at uniformity subcommittee)
- *Amendments to MTC Model Financial Institutions Apportionment* (under development at uniformity subcommittee, regular work group meetings)
- *Protection of Telecommunications Providers from Class Action Lawsuits* (under development at uniformity subcommittee)
- *Possible New Project to Develop Regulations for the Exercise of State Section 482 Authority* (subcommittee determined it would not initiate project. Part of the subcommittee consideration included of input from taxpayer groups)

#### Litigation Committee Work

Legal division supported the Litigation committee by organizing and making presentations for the July 2012 in-person meetings in Grand Rapids, Michigan and the March 2013 in-person meetings in St. Louis, Missouri. In addition, legal division organized information and training sessions for state tax attorneys, including two in-person sessions and four teleconference sessions. All meetings and teleconferences have been well attended. Attendance for teleconference meetings generally included over 50 state attorneys from more than 35 states.

#### Legal Assistance to States

The legal division consulted with individual states regarding significant on-going litigation strategy and briefs, draft legislation, and draft regulations. Through April 30<sup>th</sup> of this fiscal year, *amicus curiae* briefs were filed in the following cases:

- *Harris Corporation and Consolidated Subsidiaries v. Arizona Dep't of Revenue* (Arizona Court of Appeals) filed August 15, 2012
- *First Data Corporation et al. v. Arizona Dep't of Revenue*, (Arizona Court of Appeals) filed August 15, 2012
- *Barnesandnoble.com v. New Mexico Taxation and Revenue Department* (New Mexico Supreme Court) filed October 15, 2012
- *Home Depot USA, Inc. and Affiliates v. Arizona Dep't of Revenue*. (Arizona Court of Appeals) filed October 16 2012
- *Performance Marketing Association, Inc. v. Hamer* (Illinois Supreme Court) filed December 5, 2012.

### Commission Support

The legal division provides support for the commission's general administration by addressing open meetings issues, records requests, researching and making recommendations for record retention policies, resolving lease disputes, and filing corporate registrations and reports. Through April 30<sup>th</sup> of this fiscal year, the division has provided legal assistance to the commission's audit division on a number of challenging audit related issues and has addressed several public participation issues and records requests. Legal division has also provided support for the Commission's training division by teaching the following classes:

- Nexus Training (September 19-20, 2012; St. Paul, Minnesota)
- Combined Reporting Training (October 1-4, 2012; Helena, Montana)
- Nexus Training (December 11-12, 2012; Salt Lake City, Utah)
- Combined Reporting Training (January 14-15, 2013; Honolulu, Hawaii)
- Nexus Training (February 12-13, 2013; Salem, Oregon)
- Nexus Training (April 23-24, 2013; Phoenix, Arizona)

#### **D. Policy Research**

*Uniformity Project on Revising Model Statute on Apportioning Income of Financial Institutions* — the policy research director continues to work with other MTC staff, state revenue agency personnel, and industry representatives to develop a model apportionment statute. Policy Research staff helped develop methods for situsing loan bundles for property factor in apportionment formula. Policy Research staff also wrote memorandum on possible adoption of alternative apportionment formula for financial institutions.

#### *Multistate Tax Commission Review* —

A winter 2013 issue was published digitally on the Commission's website:

- Article by former Research Intern André Barbé on a comparison of sales taxes and gross receipts taxes
- Article by Bob Schauer and Harold Jennings Elliott Dubin on dealing with troublesome IT personnel.
- Article by former Research Interns Yi Feng and Matt Wade: Effect of Imposing Sales Taxes on Remote Commerce.

A summer 2013 issue is under development. Possible topics:

- Federal tax reform of corporate taxation and potential impact on states.
- Review of State and local finances.

*Other Activities —*

- Supports staff efforts in addressing federal legislation with implications for state and local taxation.
- Elected to Advisory Board of National Tax Association
- Monitor state adoption of MTC model statutes, regulations, and guidelines.
- Presentation of overview of U.S. Sales & Use taxes to visiting officials of Japanese housing agencies at National Association of Home Builders, October 5, 2012.
- Organized session on sales taxes for Federation of Tax Administrators Revenue Estimating and Research Conference in Providence, Rhode Island, October 21-24, 2012
- Hosted Tax Economists Forum Breakfast in Washington, D.C., December 12, 2012.
- Hosted Tax Economists Forum Breakfast in Washington, D.C., February 13, 2013.
- Presentation of state and local government tax simplification efforts at Louisiana Multi-Parish Tax Commission in New Orleans, April 4, 2013.
- Organizing, with Prof. Gary Wagner, ODU, State and Local Government Session of NTA Spring Symposium on May 17, 2013: *State and Local Finances after the Great Depression*.
- Began process of recruiting summer policy research interns.
- Organizing session on state corporate income taxes for the National Tax Association's Annual Meeting in Tampa, Florida, November 21-23, 2013.

**E. Training**

Training Program staff supported the following training activities since July 1, 2012:

Statistical Sampling for Sales and Use Tax Audits

August 27-30, 2012 in Albuquerque, New Mexico for 30 students from New Mexico.

Nexus School

September 19-20, 2012 in St. Paul, Minnesota for 38 students from Alabama, Alaska, Michigan, Minnesota, Mississippi, Montana, South Carolina, South Dakota, Washington and West Virginia.

Corporate Income Tax

October 1-4, 2012 in Helena, Montana for 32 students from Alabama, Alaska, Colorado, Idaho, Mississippi, Montana and Nebraska.

Statistical Sampling for Sales and Use Tax Audits

February 4-7, 2012 in Hoover, Alabama for 24 students from Alabama, Maryland, the private sector, and the Commission.

Nexus School

December 11-12, 2012 in Salt Lake City, Utah for 33 students from Utah, Idaho, Arizona and the Commission.

February 12-13, 2013 in Salem, Oregon for 17 students from Oregon, Maryland and the Commission.

April 23-24, 2013 in Phoenix, Arizona for 58 students from the Arizona Department of Revenue and the Commission.

Corporate Income Tax

January 14-17, 2013 in Honolulu, Hawaii for 27 students from the Hawaii Department of Taxation.

The Training Program provided corporate income tax training materials and a “train the trainer” session for the audit portion of these materials for the Michigan Department of Treasury in April, 2013. This is to support upcoming training that Michigan will be providing for their personnel.

The director of training was the principal coordinator of the August 1, 2012, annual meeting conference in Grand Rapids, Michigan. He is coordinating the July 24, 2013 annual meeting conference in San Diego, California.

## **II. Administration**

On October 15, 2012, after more than 21 years of service to the Commission, Jerry Schleeter retired. Jerry had been the administrative assistant for the Audit Program and was located in the Chicago office.

On November 29, 2012, the New York University School of Continuing and Professional Studies presented the 11th annual award for Outstanding Achievement in State and Local Taxation to Joe Huddleston, Esq., LL.D., in recognition of his unparalleled contributions in all areas of state and local taxation.

On December 3, 2012, Kristin Shuttz began work as an Administrative and Audit Assistant for the Audit Program. She quit after one day for personal reasons.

On January 1, 2013, Amber Kirby, Assistant to the Director, National Nexus Program, left employment with the Commission to join PricewaterhouseCoopers.

On January 1, 2013 the following people joined the staff of the Multistate Tax Commission as full-time employees:

- Benjamin Abalos, Associate Director of the National Nexus Program. Ben had been the Project Manager, Data Sharing Initiative, from November 2011 to December 2012.
- Michelle Becker, Administrative Assistant for the Joint Audit Program, based in the Commission's Chicago office.
- Lila Disque, Counsel with our legal division. Lila had been an intern for legal division since April 2012 and is based in the Commission's D.C. office.
- Alexis Douglas, Auditor (sales and use taxes). Alexis had previously been employed for a number of years with the Texas Comptroller's office as an auditor. She is based in the Commission's Chicago office.

The following positions were eliminated as of April 30, 2013, as part of actions taken to control expenditures within the proposed budget for fiscal year 2014:

- Administrative Assistant/Receptionist (Donna Banks)
- Publications Coordinator (Teresa Nelson)

### **III. Outside Presentations & Events**

The following are the programs, conferences, and other events of outside organizations at which members of the staff represented the Commission during the reporting period:

#### JULY

- NYU Summer Institute in Taxation, State Taxation II; New York, New York (Huddleston)
- Tax Economists Forum, *Fixing The System: An Analysis Of Alternative Proposals For The Reform Of International Tax*; Washington, D.C. (Huddleston)

#### AUGUST

- NCSL Task Force Meeting; Chicago, Illinois (Huddleston, Sicilian)
- BNA State Tax Advisory Board Roundtable, Washington, D.C. (Matson)
- Georgetown Advanced State and Local Tax Institute; Washington, D.C. (Huddleston, Sicilian)
- National Taxpayers Conference Annual Meeting; Washington, D.C. (Huddleston, Dubin)
- Tax Executives Institute Philadelphia Chapter State and Local Tax Committee Meeting; King of Prussia, Pennsylvania (Huddleston)



SEPTEMBER

- Guest lecturer, Georgetown Law School LL.M. program; Washington, D.C. (Sicilian)
- American Bar Association Section of Taxation Joint Fall CLE Meeting; Boston, Massachusetts (Sicilian)

OCTOBER

- Annual Meeting of North Eastern State Tax Officials Association; Portsmouth, New Hampshire (Huddleston)
- Tax Analysts Conference, *Taxes and the Poor*; Washington, D.C. (Huddleston)
- Western States Association of Tax Administrators Conference; Redondo Beach, California (Huddleston)
- Stafford Seminars, online presentation (Sicilian)
- Federation of Tax Administrators Revenue Estimating and Research Conference; Providence, Rhode Island (Dubin)

NOVEMBER

- California Tax Policy Conference; Coronado, California (Huddleston)
- Institute for Professionals in Taxation, Income Tax Symposium; Arlington, Virginia (Sicilian)
- AICPA National Tax Conference; Washington, D.C. (Huddleston)
- Hartman State and Local Tax Forum; Nashville, Tennessee (Fort, Matson, Sicilian)
- National Tax Association Annual Meeting; Providence, Rhode Island (Dubin)
- New England State and Local Tax Forum; Needham, Massachusetts (Huddleston)
- New Jersey Society of CPAs Multistate Tax Conference, Edison, New Jersey (Matson)
- Career night for students at Kogod School of Business, American University, Washington, D.C. (Shimkin)
- New York University Institute on State and Local Taxation; New York, New York (Huddleston, Fort)

DECEMBER

- COST Mid-Atlantic Regional State Tax Seminar, Falls Church, Virginia (Matson)

JANUARY

- New York State Bar Association meeting, New York, New York (Sicilian)
- American Bar Association meeting, Orlando, Florida (Sicilian)
- Cornell State & Local Tax Group Luncheon, New York, New York (Huddleston)
- 22nd Annual Ohio State Tax Conference; Columbus, Ohio (Huddleston)

FEBRUARY

- Deloitte and Florida Bar Tax Section's National Multistate Tax Symposium; Orlando, Florida (Huddleston)
- NYU State Tax Group lunch meeting, New York, New York (Matson)
- Tax Analysts conference, *The Future of Federal Income Tax*, Washington, D.C. (Dubin, Huddleston)
- Brookings Institute, *Real Specifics: 15 Ways to Rethink the Federal Budget—Part II: Addressing Entitlements, Taxation, and Revenues*, Washington, D.C. (Dubin, Huddleston)

MARCH

- Tax Executive Institute's 63rd Midyear Conference, Washington, D.C. (Huddleston)
- ABA/IPT Advanced Tax Seminars, New Orleans, Louisiana (Sicilian)

APRIL

- American Tax Policy Institute & Rice University's Baker Institute conference, *Reforming the U.S. System For Taxing International Income*, Washington, D.C. (Huddleston)

### **Technology Addendum**

The Technology Committee was inactivated by the Executive Committee in June of 2011; during the time this committee is inactive, the Executive Director is responsible for providing this technology update with this report.

Configuration of DSI related hardware, functionality, and security testing was completed. The technology portion of the data sharing initiative (DSI) project has been completed. Data was received, by physical media and secure electronic transfer, stored, encrypted and accessed successfully on the DSI isolated network. The virtual machines, as well as the substantiating documentation have been archived.

A new secure email system has been put in place. The new system is a Linux hardened appliance that provides additional functionality (i.e. registered users on the system can send secure emails to other registered users, not just Commission staff).

The new Exchange 2010 email server is in place and is currently coexisting with the Exchange 2003 server. Mailbox migration has begun and soon the Exchange 2003 server will be decommissioned.

All internal switching hardware has been upgraded to Juniper Gigabit switches. This will increase the speed at which internal users will be able to access their files and email in the DC office. The switches in the New York and Chicago offices have also been successfully upgraded to Juniper Gigabit (POE) switches.

The entire DC and NY office phone systems have been swapped to VoIP phone system. The Chicago office and associated remote staff will be migrated to VoIP phones soon.

The Commission is working with Quality Assessment Solutions, LLC, regarding a centralized contact and membership management database. The application is in the final stages of testing. What is now dubbed the "State Contact Portal" (*scp.mtc.gov*) is outward facing and accessible from the Internet. The deputy executive director and network administrator are identifying programmatic items that need to be addressed before publicizing the application.

The network administrator has also been working with National Nexus Program staff to provide technical support voluntary disclosure application system. A six-month support agreement has been agreed upon and a few of the immediate concerns are being addressed. Before the end of the six months we will reassess the agreement and decide how to best move forward at that point.

The need for a way to securely transfer large (over 10 MB) files has become an issue as MTC staff has expressed an increasing need to share these large files with tax payers and state personnel. The Network Administrator is looking in to possible solutions

that not only provide the transfer functionality, but also meet the security requirements of these documents.

An SSL-VPN appliance will be installed in the Chicago office and configured to allow real time access to files on the Chicago server for Audit staff.

Uninterrupted Power Supply (UPS) units with network manageability were installed in the New York and Chicago offices. These will allow the selected computers to shut down gracefully in the event of a power failure. The Network manageability allows the Network Administrator to more closely monitor and troubleshoot power issues in the remote offices from the DC office.

The Commission's website continues to provide the latest source of information on MTC events and activities. From July 1, 2012 to April 30, 2013, the website received 117,783 visitors and 335,423 pageviews. The Sales and Use Certificate webpage received 16% of pageviews followed in popularity by the homepage with 13% pageviews. Our Sales and Use Certificate webpage provides a one-stop destination for the Uniform and Sales and Use Tax Exemption certificate. We are working with our public website hosting provider on options to improve our content management system with a goal of improve overall website currency and performance.

In advance of and during the 45<sup>th</sup> Annual Meeting in Grand Rapids, we received a peak high of 2,493 pageviews on Thursday, July 26, 2012, followed with 2,484 pageviews on Monday, July 30.

#### *Interesting Facts*

- The Commission's website received 37% new visitors and 63% returning visitors.
- A total of 13,087 visits came directly to [www.mtc.gov](http://www.mtc.gov) with an average duration time of 2 minutes and 57 seconds.
- 117,783 people visited our website with 63% from search traffic, 21% from direct traffic with no referral, and 16% from referral sites such as Alabama, Washington State, Iowa Department of Revenue, Maine, and Streamlined Sales Tax.
- Google continues to lead search traffic referring sites with 50% of visitors, followed by direct visitors with 20%, and Bing with 7%.
- Internet Explorer continues to be the top web browser with 64% of visits, followed by Google's Chrome with 25%.

**Most Popular Pages of the Website**

	<b>Page Title</b>	<b>Total Page Views</b>	<b>Unique Views</b>	<b>Average Time on Page in minutes</b>
<b>1</b>	Sales & Use Certificate	55,050	40,193	0:02:13
<b>2</b>	Homepage	48,529	34,161	0:01:13
<b>3</b>	State Map	17,159	10,343	0:01:50
<b>4</b>	MTC Compact	14,952	12,029	0:00:26
<b>5</b>	About Nexus Program	7,355	8,490	0:00:34
<b>6</b>	FAQ Sales and Use Certificate	7149	5,092	0:02:31
<b>7</b>	About Multistate Tax Commission	5,513	6,122	0:01:41
<b>8</b>	Overview Multistate Voluntary Disclosure Program	5,307	4,380	0:01:59
<b>9</b>	Uniformity Adopted Recommendations	5,268	3,920	0:01:58
<b>10</b>	About the Multistate Tax Commission	5,110	2,799	0:00:58